

¹ See p. 5, *infra*.

1. On October 31, 2014, the Board issued its final Decision and Order in *Oak Harbor Freight Lines, Inc.*, reported at 361 NLRB No. 82. The Board found that the Company had committed certain unfair labor practices but dismissed the remainder of the allegations against the Company.

2. Both the Unions and the Company object to portions of the Board's Decision and Order and have respectively filed petitions for review challenging the Board's Decision and Order.²

3. The Unions, which were the Charging Party before the Board, have intervened in the Company's review proceeding.³ Similarly, the Company, which was the Respondent before the Board, has intervened in the Unions' review proceeding.⁴

4. The Board has filed a cross-application seeking enforcement of its Order.⁵

² See *Oak Harbor Freight Lines, Inc. v. NLRB*, Case No. 14-1226 (D.C. Cir.); *Teamsters Union Local Number 81, 174, 231, 252, 324, 483, 589, 690, 760, 763, 839, and 962 v. NLRB*, Case No. 14-1273 (D.C. Cir.).

³ See Order, Case No. 14-1226 (Jan. 15, 2015) (granting Unions' motion to intervene).

⁴ See Order, Case No. 14-1273 (Dec. 10, 2014) (granting Company's motion to intervene).

⁵ See *NLRB v. Oak Harbor Freight Lines, Inc.*, Case No. 15-1002 (D.C. Cir.).

5. On January 27, 2015, the Court ordered the parties to submit proposed formats for briefing in the above-captioned cases, which have been consolidated by the Court for purposes of briefing. The Court strongly urged the parties to submit a joint proposal, and stated that, “where appropriate,” it will require a joint brief of “aligned parties.”

6. In their respective challenges to the Board’s Order, the Company and the Union are each entitled under the Federal Rules to file opening briefs containing 14,000 words and reply briefs containing 7,000 words.⁶

7. As intervenors in partial support of the Board’s Order, the Company and the Union are each entitled under the Federal Rules to file briefs containing 8,750 words.⁷

8. The briefing format proposed by the parties differs from the customary briefing format in the following respects:

a. The parties’ proposal allocates 21,000 words for the Board’s response brief—half as many words as the Company and Union may use in challenging the Board’s order. The Board estimates that it will use 5,000 words to address the factual background and procedural history of the case; 8,000 words to

⁶ See Fed. R. App. P. 32(a)(7)(B).

⁷ See D.C. Cir. R. 32(a)(2)(B).

address the issues raised by the Company; and 8,000 words to address the issues raised by the Unions.

b. Given that the Board must respond to objections made by both the Company and the Unions, the Board's proposal extends the customary time between the filing of the Petitioners' briefs and the Board's brief by ten (10) calendar days.

9. The parties do not believe that the filing of joint briefs by "aligned parties" is possible or desirable. As a governmental agency entrusted with enforcing the National Labor Relations Act on behalf of the public,⁸ the Board has interests distinct from and often incompatible with those of a private party. Accordingly, this Court's rules recognize that when a federal agency intervenes in a proceeding, it should not be required to file a joint brief with other intervenors.⁹ For similar reasons, the parties agree that it would be inappropriate for the Board to file a joint brief with either of the intervenors in this case.

⁸ See generally *National Licorice Co. v. NLRB*, 309 U.S. 350, 364 (1940) ("The Board asserts a public right vested in it as a public body, charged in the public interest with the duty of preventing unfair labor practices.").

⁹ D.C. Cir. R. 28(d)(4) ("Intervenors on the same side must join in a single brief to the extent practicable. This requirement does not apply to a governmental entity.").

For the foregoing reasons, the Board, the Company, and the Unions respectfully request that this Court adopt the following briefing proposal:

Day 0: Issuance of Scheduling Order

Day 45: Petitioners' Briefs

- (1) Opening Brief of Petitioner Oak Harbor Freight Lines, Inc.
(14,000 word limit)
- (2) Opening Brief of Petitioner Teamsters Union Local Number 81, 174, 231, 252, 324, 483, 589, 690, 760, 763, 839, and 962,
(14,000 word limit)

Day 85: Respondent's Brief

Brief on Behalf of the National Labor Relations Board
(21,000 word limit)

Day 100: Intervenors' Briefs

- (1) Brief of Intervenor Oak Harbor Freight Lines, Inc., in partial support of the Board (8,750 word limit)
- (2) Brief of Intervenor Teamsters Union Local Number 81, 174, 231, 252, 324, 483, 589, 690, 760, 763, 839, and 962, in partial support of the Board (8,750 word limit)

Day 114: Petitioners' Reply Briefs

- (1) Reply Brief of Petitioner Oak Harbor Freight Lines, Inc.
(7,000 word limit)
- (2) Reply Brief of Petitioner Teamsters Union Local Number 81, 174, 231, 252, 324, 483, 589, 690, 760, 763, 839, and 962
(7,000 word limit)

Day 121: Deferred Joint Appendix

Day 135: Final Briefs with Cites to Deferred Joint Appendix

Respectfully submitted,

/s/ Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

NATIONAL LABOR RELATIONS BOARD

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Dated at Washington, D.C.
this 26th day of February 2015

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

OAK HARBOR FREIGHT LINES, INC.,)		
Petitioner/Cross-Respondent)		
v.)	No.	14-1226,
)		15-1002
NATIONAL LABOR RELATIONS BOARD,)		
Respondent/Cross-Petitioner)		
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TEAMSTERS UNION LOCAL NUMBER 81,)		
174, 231, 252, 324, 483, 589, 690, 760, 763,)		
839, AND 962,)	No.	14-1273
Petitioners)		
v.)		
)		
NATIONAL LABOR RELATIONS BOARD,)		
Respondent)		
)		

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February 2015, copies of the foregoing document were served upon all counsel of record via the Court's ECF notification system.

/s/ Douglas Callahan
Douglas Callahan
Attorney
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1099 14th Street NW
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Dated at Washington, D.C.
this 26th day of February 2015